



## INTERIOR BOARD OF INDIAN APPEALS

F. Howard Walsh, Jr., and Mae Lamar Davis and Newton Lamar  
v. Acting Deputy Assistant Secretary - Indian Affairs (Operations)

13 IBIA 312 (11/05/1985)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

F. HOWARD WALSH, JR.,  
Appellant

v.

DEPUTY ASSISTANT SECRETARY--  
INDIAN AFFAIRS (OPERATIONS),  
Appellee

and

MAE LAMAR DAVIS and  
NEWTON LAMAR,  
Appellants

v.

ACTING DEPUTY ASSISTANT  
SECRETARY--INDIAN AFFAIRS  
(OPERATIONS),  
Appellee

: Order Dismissing Appeals for Lack of  
: Jurisdiction and Referring Cases to  
: the Board of Land Appeals

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: Docket Nos. IBIA 85-51-A  
: IBIA 85-52-A

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: November 5, 1985

On September 23 and 30, 1985, respectively, the Board of Indian Appeals (Board) received notices of appeal from F. Howard Walsh, Jr., and Mae Lamar Davis and Newton Lamar. These notices of appeal both stemmed from decisions made by the Acting Deputy Assistant Secretary--Indian Affairs (Operations) concerning waste of natural gas from Indian trust land. The decision letters specifically stated that any appeal from the decisions should be made to the Board of Indian Appeals.

The Board has carefully reviewed the documents submitted with the notices of appeal and has determined that it lacks jurisdiction over the appeals. Under 43 CFR 4.330(b)(3), the Board does not have jurisdiction over:

[A]ppeals from decisions of the Commissioner of Indian Affairs [1/] pertaining to final recommendations or actions by officials of the Conservation Division, Geological Survey, [2/] unless the Commissioner's decision is based on an

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1/ Because the office of Commissioner of Indian Affairs is vacant, the administrative review functions assigned to the Commissioner in 25 CFR Part 2 were delegated to the Deputy Assistant Secretary--Indian Affairs (Operations) by memorandum dated May 15, 1981, signed by the Assistant Secretary for Indian Affairs. 2/ Former functions of the Conservation Division, Geological Survey, have been transferred to the Mineral Management Service (MMS). See Secretarial Order No. 3071, May 10, 1982.

interpretation of Federal Indian law (Commissioner's decisions not so based which arise from determinations of the Geological Survey are appealable to the Board of Land Appeals in accordance with 43 CFR 4.410).

The present appeals arise from a specialized determination of MMS relating to the amount of natural gas that escaped from a well on Indian trust land. Accordingly, the Acting Deputy Assistant Secretary's decision pertained to a final recommendation of officials of MMS. Thus, the appeals should have been taken to the Board of Land Appeals, and this Board must dismiss the cases for lack of jurisdiction. See 30 CFR 290.7.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1 and 4.330, the above described appeals are dismissed for lack of jurisdiction and the cases are referred to the Board of Land Appeals for appropriate action. The administrative record, which was received on November 4, 1985, is hereby transmitted to the Board of Land Appeals.

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//original signed  
Bernard V. Parrette  
Chief Administrative Judge

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//original signed  
Jerry Muskrat  
Administrative Judge